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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/662,194	09/14/2000	Kent D. Benson	06269-020001	2401
26161	7590	11/14/2005	EXAMINER	
FISH & RICHARDSON PC			DUONG, FRANK	
P.O. BOX 1022			ART UNIT	
MINNEAPOLIS, MN 55440-1022			PAPER NUMBER	
			2666	

DATE MAILED: 11/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/662,194

Applicant(s)

BENSON ET AL.

Examiner

Frank Duong

Art Unit

2666

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 04 November 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Attachment!. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1,3-11,13-17,19-42,44-52 and 54-97.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

  
**FRANK DUONG**  
**PRIMARY EXAMINER**

## **ATTACHMENT**

### ***Response to Arguments***

Applicant's arguments filed 11/04/05 have been fully considered but they are not persuasive. The proposed amendment accompanied by outstanding remarks or arguments fails to place the application in a favorable condition for allowance.

The propose amendment would add new limitations to claims 1, 42, 89, 7, 48, 90, 11, 52, 91, 17, 58 and 93; thus, it would change scope of the invention originally claimed and previously prosecuted. Therefore, it raises new issues and require further consideration and/or search. The arguments pertaining the forementioned claims have been noted.

The argument pertaining the rejection of claims 15, 56 and 92 on page 28 is not persuasive. As clearly pointed out in the Office Action dated 09/20/04, Hou anticipated the claimed invention. In a reponse dated 01/21/05, Applicants chose to amend the above claims to include limitation of *"the character corresponding to a probability of the data flow in using the bandwidth"*. Such limitation is not patentable and disclosed by Hou as clearly pointed out in the Office Action dated 06/01/05. In the response filed on 01/21/05, Applicants failed to argue, address or were silent about the Hou's anticipation of the remaining limitation of *"allocating bandwidth ... using the bandwith"*. In doing so, Applicants had admitted that Hou indeed anticipated the above limitation.

On page 29, pertaining the rejection of claims 25, 66 and 94, Applicants argue *"Hou discloses a process which sorts the sessions into a list according to increasing rate from the lowest to highest and increases the rate of the session having the smallest*

*rate. Therefore, Hou allocates the bandwidth to the data flow having the lowest rate and not to in portion to a weight “corresponding to a delay and an average rate requirement for each uncommitted data traffic flow” as recited in the claims.*

In response Examiner respectfully disagrees and asserts the Hou as clearly pointed out in the Office Action dated 06/01/05 does indeed anticipate the claimed limitation. In the Office Action dated 06/01/05, the disputed limitation is addressed as “GMM processing known in the art as weighted (rate) maximum/minimum process and at col. 5, lines 16-17, Hou discloses each session *s* is assigned a rate (weigh) equivalent to its corresponding minimum cell rate (MCRs) and sessions are sorted in order of increasing MCR to produce a list of session (corresponding to “a delay”)”.

The remaining arguments pertaining the rejection of claims 26, 67, 95 on page 30; claims 29, 70 and 96 on pages 30-31; and claims 83, 85 and 97 on page 31 are not persuasive. Please see Office Action dated 06/01/05 for response.

Examiner believes an earnest attempt has been made in addressing all of the Applicants' arguments. Due to the amendment fails to place the application in a favorable condition for allowance and the arguments are not persuasive, the rejection is maintained.

A handwritten signature in black ink, appearing to read 'Frank Duong', with a stylized flourish at the end.

**FRANK DUONG  
PRIMARY EXAMINER**